

1 In addition to the foregoing, "reorganization" shall
2 include for purposes of this Section any transaction which,
3 regardless of the means by which it is accomplished, will
4 have the effect of terminating the affiliated interest status
5 of any entity as defined in paragraphs (a), (b), (c) or (d)
6 of subsection (2) of Section 7-101 of this Act where such
7 entity had transactions with the public utility, in the 12
8 calendar months immediately preceding the date of termination
9 of such affiliated interest status subject to subsection (3)
10 of Section 7-101 of this Act with a value greater than 15% of
11 the public utility's revenues for that same 12-month period.
12 If the proposed transaction would have the effect of
13 terminating the affiliated interest status of more than one
14 Illinois public utility, the utility with the greatest
15 revenues for the 12-month period shall be used to determine
16 whether such proposed transaction is a reorganization for the
17 purposes of this Section. The Commission shall have
18 jurisdiction over any reorganization as defined herein.

19 (b) No reorganization shall take place without prior
20 Commission approval. The Commission shall not approve any
21 proposed reorganization if the Commission finds, after notice
22 and hearing, that the reorganization will adversely affect
23 the utility's ability to perform its duties under this Act.
24 In reviewing any proposed reorganization, the Commission must
25 find that:

26 (1) the proposed reorganization will not diminish
27 the utility's ability to provide adequate, reliable,
28 efficient, safe and least-cost public utility service;

29 (2) the proposed reorganization will not result in
30 the unjustified subsidization of non-utility activities
31 by the utility or its customers;

32 (3) costs and facilities are fairly and reasonably
33 allocated between utility and non-utility activities in
34 such a manner that the Commission may identify those

1 costs and facilities which are properly included by the
2 utility for ratemaking purposes;

3 (4) the proposed reorganization will not
4 significantly impair the utility's ability to raise
5 necessary capital on reasonable terms or to maintain a
6 reasonable capital structure;

7 (5) the utility will remain subject to all
8 applicable laws, regulations, rules, decisions and
9 policies governing the regulation of Illinois public
10 utilities;

11 (6) the proposed reorganization is not likely to
12 have a significant adverse effect on competition in those
13 markets over which the Commission has jurisdiction;

14 (7) the proposed reorganization is not likely to
15 result in any adverse rate impacts on retail customers.

16 (c) The Commission shall not approve a reorganization
17 without ruling on: (i) the allocation of any savings
18 resulting from the proposed reorganization; and (ii) whether
19 the companies should be allowed to recover any costs incurred
20 in accomplishing the proposed reorganization and, if so, the
21 amount of costs eligible for recovery and how the costs will
22 be allocated.

23 (d) The Commission shall issue its Order approving or
24 denying the proposed reorganization within 11 months after
25 the application is filed, however, the Commission may not
26 issue its order approving or disapproving a proposed
27 reorganization of an Illinois gas public utility earlier than
28 7 months after the application is filed. The Commission may
29 extend the deadline for a period equivalent to the length of
30 any delay which the Commission finds to have been caused by
31 the Applicant's failure to provide data or information
32 requested by the Commission or that the Commission ordered
33 the Applicant to provide to the parties. The Commission may
34 also extend the deadline by an additional period not to

1 exceed 3 months to consider amendments to the Applicant's
2 filing, or to consider reasonably unforeseeable changes in
3 circumstances subsequent to the Applicant's initial filing.

4 (e) Subsections (c) and (d) and subparagraphs (6) and
5 (7) of subsection (b) of this Section shall apply only to
6 merger applications submitted to the Commission subsequent to
7 April 23, 1997. No other Commission approvals shall be
8 required for mergers that are subject to this Section.

9 (f) In approving any proposed reorganization pursuant to
10 this Section the Commission may impose such terms, conditions
11 or requirements as, in its judgment, are necessary to protect
12 the interests of the public utility and its customers.

13 (Source: P.A. 90-561, eff. 12-16-97.)

14 (220 ILCS 5/9-220) (from Ch. 111 2/3, par. 9-220)

15 Sec. 9-220. Rate changes based on changes in fuel costs.

16 (a) Notwithstanding the provisions of Section 9-201, the
17 Commission may authorize the increase or decrease of rates
18 and charges based upon changes in the cost of fuel used in
19 the generation or production of electric power, changes in
20 the cost of purchased power, or changes in the cost of
21 purchased gas through the application of fuel adjustment
22 clauses or purchased gas adjustment clauses. The Commission
23 may also authorize the increase or decrease of rates and
24 charges based upon expenditures or revenues resulting from
25 the purchase or sale of emission allowances created under the
26 federal Clean Air Act Amendments of 1990, through such fuel
27 adjustment clauses, as a cost of fuel. For the purposes of
28 this paragraph, cost of fuel used in the generation or
29 production of electric power shall include the amount of any
30 fees paid by the utility for the implementation and operation
31 of a process for the desulfurization of the flue gas when
32 burning high sulfur coal at any location within the State of
33 Illinois irrespective of the attainment status designation of

1 such location; but shall not include transportation costs of
2 coal (i) except to the extent that for contracts entered into
3 on and after the effective date of this amendatory Act of
4 1997, the cost of the coal, including transportation costs,
5 constitutes the lowest cost for adequate and reliable fuel
6 supply reasonably available to the public utility in
7 comparison to the cost, including transportation costs, of
8 other adequate and reliable sources of fuel supply reasonably
9 available to the public utility, or (ii) except as otherwise
10 provided in the next 3 sentences of this paragraph. Such
11 costs of fuel shall, when requested by a utility or at the
12 conclusion of the utility's next general electric rate
13 proceeding, whichever shall first occur, include
14 transportation costs of coal purchased under existing coal
15 purchase contracts. For purposes of this paragraph "existing
16 coal purchase contracts" means contracts for the purchase of
17 coal in effect on the effective date of this amendatory Act
18 of 1991, as such contracts may thereafter be amended, but
19 only to the extent that any such amendment does not increase
20 the aggregate quantity of coal to be purchased under such
21 contract. Nothing herein shall authorize an electric utility
22 to recover through its fuel adjustment clause any amounts of
23 transportation costs of coal that were included in the
24 revenue requirement used to set base rates in its most recent
25 general rate proceeding. For purposes of this Section, the
26 cost of purchased gas includes expenditures made pursuant to
27 Section 9-220.5. Cost shall be based upon uniformly applied
28 accounting principles. Annually, the Commission shall
29 initiate public hearings to determine whether the clauses
30 reflect actual costs of fuel, gas, power, or coal
31 transportation purchased to determine whether such purchases
32 were prudent, and to reconcile any amounts collected with the
33 actual costs of fuel, power, gas, or coal transportation
34 prudently purchased. In each such proceeding, the burden of

1 proof shall be upon the utility to establish the prudence of
2 its cost of fuel, power, gas, or coal transportation
3 purchases and costs. The Commission shall issue its final
4 order in each such annual proceeding for an electric utility
5 by December 31 of the year immediately following the year to
6 which the proceeding pertains, provided, that the Commission
7 shall issue its final order with respect to such annual
8 proceeding for the years 1996 and earlier by December 31,
9 1998.

10 (b) A public utility providing electric service, other
11 than a public utility described in subsections (e) or (f) of
12 this Section, may at any time during the mandatory transition
13 period file with the Commission proposed tariff sheets that
14 eliminate the public utility's fuel adjustment clause and
15 adjust the public utility's base rate tariffs by the amount
16 necessary for the base fuel component of the base rates to
17 recover the public utility's average fuel and power supply
18 costs per kilowatt-hour for the 2 most recent years for which
19 the Commission has issued final orders in annual proceedings
20 pursuant to subsection (a), where the average fuel and power
21 supply costs per kilowatt-hour shall be calculated as the sum
22 of the public utility's prudent and allowable fuel and power
23 supply costs as found by the Commission in the 2 proceedings
24 divided by the public utility's actual jurisdictional
25 kilowatt-hour sales for those 2 years. Notwithstanding any
26 contrary or inconsistent provisions in Section 9-201 of this
27 Act, in subsection (a) of this Section or in any rules or
28 regulations promulgated by the Commission pursuant to
29 subsection (g) of this Section, the Commission shall review
30 and shall by order approve, or approve as modified, the
31 proposed tariff sheets within 60 days after the date of the
32 public utility's filing. The Commission may modify the
33 public utility's proposed tariff sheets only to the extent
34 the Commission finds necessary to achieve conformance to the

1 requirements of this subsection (b). During the 5 years
2 following the date of the Commission's order, but in any
3 event no earlier than January 1, 2005, a public utility whose
4 fuel adjustment clause has been eliminated pursuant to this
5 subsection shall not file proposed tariff sheets seeking, or
6 otherwise petition the Commission for, reinstatement of a
7 fuel adjustment clause.

8 (c) Notwithstanding any contrary or inconsistent
9 provisions in Section 9-201 of this Act, in subsection (a) of
10 this Section or in any rules or regulations promulgated by
11 the Commission pursuant to subsection (g) of this Section, a
12 public utility providing electric service, other than a
13 public utility described in subsection (e) or (f) of this
14 Section, may at any time during the mandatory transition
15 period file with the Commission proposed tariff sheets that
16 establish the rate per kilowatt-hour to be applied pursuant
17 to the public utility's fuel adjustment clause at the average
18 value for such rate during the preceding 24 months, provided
19 that such average rate results in a credit to customers'
20 bills, without making any revisions to the public utility's
21 base rate tariffs. The proposed tariff sheets shall
22 establish the fuel adjustment rate for a specific time period
23 of at least 3 years but not more than 5 years, provided that
24 the terms and conditions for any reinstatement earlier than 5
25 years shall be set forth in the proposed tariff sheets and
26 subject to modification or approval by the Commission. The
27 Commission shall review and shall by order approve the
28 proposed tariff sheets if it finds that the requirements of
29 this subsection are met. The Commission shall not conduct
30 the annual hearings specified in the last 3 sentences of
31 subsection (a) of this Section for the utility for the period
32 that the factor established pursuant to this subsection is in
33 effect.

34 (d) A public utility providing electric service, or a

1 public utility providing gas service may file with the
2 Commission proposed tariff sheets that eliminate the public
3 utility's fuel or purchased gas adjustment clause and adjust
4 the public utility's base rate tariffs to provide for
5 recovery of power supply costs or gas supply costs that would
6 have been recovered through such clause; provided, that the
7 provisions of this subsection (d) shall not be available to a
8 public utility described in subsections (e) or (f) of this
9 Section to eliminate its fuel adjustment clause.
10 Notwithstanding any contrary or inconsistent provisions in
11 Section 9-201 of this Act, in subsection (a) of this Section,
12 or in any rules or regulations promulgated by the Commission
13 pursuant to subsection (g) of this Section, the Commission
14 shall review and shall by order approve, or approve as
15 modified in the Commission's order, the proposed tariff
16 sheets within 240 days after the date of the public utility's
17 filing. The Commission's order shall approve rates and
18 charges that the Commission, based on information in the
19 public utility's filing or on the record if a hearing is held
20 by the Commission, finds will recover the reasonable, prudent
21 and necessary jurisdictional power supply costs or gas supply
22 costs incurred or to be incurred by the public utility during
23 a 12 month period found by the Commission to be appropriate
24 for these purposes, provided, that such period shall be
25 either (i) a 12 month historical period occurring during the
26 15 months ending on the date of the public utility's filing,
27 or (ii) a 12 month future period ending no later than 15
28 months following the date of the public utility's filing.
29 The public utility shall include with its tariff filing
30 information showing both (1) its actual jurisdictional power
31 supply costs or gas supply costs for a 12 month historical
32 period conforming to (i) above and (2) its projected
33 jurisdictional power supply costs or gas supply costs for a
34 future 12 month period conforming to (ii) above. If the

1 Commission's order requires modifications in the tariff
2 sheets filed by the public utility, the public utility shall
3 have 7 days following the date of the order to notify the
4 Commission whether the public utility will implement the
5 modified tariffs or elect to continue its fuel or purchased
6 gas adjustment clause in force as though no order had been
7 entered. The Commission's order shall provide for any
8 reconciliation of power supply costs or gas supply costs, as
9 the case may be, and associated revenues through the date
10 that the public utility's fuel or purchased gas adjustment
11 clause is eliminated. During the 5 years following the date
12 of the Commission's order, a public utility whose fuel or
13 purchased gas adjustment clause has been eliminated pursuant
14 to this subsection shall not file proposed tariff sheets
15 seeking, or otherwise petition the Commission for,
16 reinstatement or adoption of a fuel or purchased gas
17 adjustment clause. Nothing in this subsection (d) shall be
18 construed as limiting the Commission's authority to eliminate
19 a public utility's fuel adjustment clause or purchased gas
20 adjustment clause in accordance with any other applicable
21 provisions of this Act.

22 (e) Notwithstanding any contrary or inconsistent
23 provisions in Section 9-201 of this Act, in subsection (a)
24 of this Section, or in any rules promulgated by the
25 Commission pursuant to subsection (g) of this Section, a
26 public utility providing electric service to more than
27 1,000,000 customers in this State may, within the first 6
28 months after the effective date of this amendatory Act of
29 1997, file with the Commission proposed tariff sheets that
30 eliminate, effective January 1, 1997, the public utility's
31 fuel adjustment clause without adjusting its base rates, and
32 such tariff sheets shall be effective upon filing. To the
33 extent the application of the fuel adjustment clause had
34 resulted in net charges to customers after January 1, 1997,

1 the utility shall also file a tariff sheet that provides for
2 a refund stated on a per kilowatt-hour basis of such charges
3 over a period not to exceed 6 months; provided however, that
4 such refund shall not include the proportional amounts of
5 taxes paid under the Use Tax Act, Service Use Tax Act,
6 Service Occupation Tax Act, and Retailers' Occupation Tax Act
7 on fuel used in generation. The Commission shall issue an
8 order within 45 days after the date of the public utility's
9 filing approving or approving as modified such tariff sheet.
10 If the fuel adjustment clause is eliminated pursuant to this
11 subsection, the Commission shall not conduct the annual
12 hearings specified in the last 3 sentences of subsection (a)
13 of this Section for the utility for any period after
14 December 31, 1996 and prior to any reinstatement of such
15 clause. A public utility whose fuel adjustment clause has
16 been eliminated pursuant to this subsection shall not file a
17 proposed tariff sheet seeking, or otherwise petition the
18 Commission for, reinstatement of the fuel adjustment clause
19 prior to January 1, 2005.

20 (f) Notwithstanding any contrary or inconsistent
21 provisions in Section 9-201 of this Act, in subsection (a) of
22 this Section, or in any rules or regulations promulgated by
23 the Commission pursuant to subsection (g) of this Section, a
24 public utility providing electric service to more than
25 500,000 customers but fewer than 1,000,000 customers in this
26 State may, within the first 6 months after the effective date
27 of this amendatory Act of 1997, file with the Commission
28 proposed tariff sheets that eliminate, effective January 1,
29 1997, the public utility's fuel adjustment clause and adjust
30 its base rates by the amount necessary for the base fuel
31 component of the base rates to recover 91% of the public
32 utility's average fuel and power supply costs for the 2 most
33 recent years for which the Commission, as of January 1, 1997,
34 has issued final orders in annual proceedings pursuant to

1 subsection (a), where the average fuel and power supply costs
2 per kilowatt-hour shall be calculated as the sum of the
3 public utility's prudent and allowable fuel and power supply
4 costs as found by the Commission in the 2 proceedings divided
5 by the public utility's actual jurisdictional kilowatt-hour
6 sales for those 2 years, provided, that such tariff sheets
7 shall be effective upon filing. To the extent the
8 application of the fuel adjustment clause had resulted in net
9 charges to customers after January 1, 1997, the utility shall
10 also file a tariff sheet that provides for a refund stated on
11 a per kilowatt-hour basis of such charges over a period not
12 to exceed 6 months. Provided however, that such refund shall
13 not include the proportional amounts of taxes paid under the
14 Use Tax Act, Service Use Tax Act, Service Occupation Tax Act,
15 and Retailers' Occupation Tax Act on fuel used in generation.
16 The Commission shall issue an order within 45 days after the
17 date of the public utility's filing approving or approving as
18 modified such tariff sheet. If the fuel adjustment clause is
19 eliminated pursuant to this subsection, the Commission shall
20 not conduct the annual hearings specified in the last 3
21 sentences of subsection (a) of this Section for the utility
22 for any period after December 31, 1996 and prior to any
23 reinstatement of such clause. A public utility whose fuel
24 adjustment clause has been eliminated pursuant to this
25 subsection shall not file a proposed tariff sheet seeking, or
26 otherwise petition the Commission for, reinstatement of the
27 fuel adjustment clause prior to January 1, 2005.

28 (g) The Commission shall have authority to promulgate
29 rules and regulations to carry out the provisions of this
30 Section.

31 (Source: P.A. 90-561, eff. 12-16-97.)

32 (220 ILCS 5/9-220.5 new)

33 Sec. 9-220.5. Gas cost risk management.

1 (a) A gas utility may recover expenditures made under
2 this Section as a cost of purchased gas through a purchased
3 gas adjustment clause approved under Section 9-220. In order
4 to recover expenditures under this Section, a gas utility
5 must file with the Commission a risk management plan designed
6 to lessen customer exposure to adverse price movement in the
7 cost of natural gas. The Commission shall issue rules
8 necessary to implement this expenditure recovery process.

9 (b) For natural gas intended for delivery to customers
10 on or after October 1, 2001, a gas utility may implement and
11 recover expenditures for a natural gas cost risk program. The
12 program may include the use of hedging tools and natural gas
13 supply portfolio diversification. Hedging tools may include,
14 but are not limited to, exchange-traded options and
15 over-the-counter options.

16 (c) For natural gas intended for delivery to customers
17 on or after October 1, 2001, a gas utility may use hedging
18 tools and natural gas supply portfolio diversification at any
19 time. Expenditures incurred in hedging activities under this
20 Section may be incorporated into the cost of purchased gas
21 during the month the premiums and related expenses are
22 incurred. However, premiums and related expenses for hedging
23 activities may not exceed 2.5% of the utility's annual total
24 gas costs. Premiums and related hedging expenses incurred in
25 compliance with this subsection are not subject to review for
26 prudence. In addition, the Commission may not review the
27 prudence of expenditures incurred pursuant to this Section
28 for the purchase of natural gas.

29 Section 99. Effective date. This Act takes effect upon
30 becoming law."